

**Introduced by Senator Kehoe**

February 22, 2005

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An act to amend Sections 945, 1363, 1374, and 1378 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 853, as amended, Kehoe. Common interest developments.

(1) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments. Existing law requires that when a common interest development association's governing documents require association approval before an owner may make a physical change to the owner's separate interest or to the common area, the association must satisfy specified provisions. Among these provisions is a requirement that a decision on a proposed change be consistent with any governing provision of law, including the Fair Employment and Housing Act.

This bill would specify that the requirement that a decision on a proposed change be consistent with any governing provision of law, described above, is not affected by contrary provisions in the association governing documents. The bill would also provide other examples of law with which a decision of the association must be consistent, *and would make a conforming change*.

(2) Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in specified civil proceedings in its own name, and addresses the reduction of damages for comparative fault in this context.

This bill would delete erroneous cross references and make nonsubstantive, technical changes in reference to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 945 of the Civil Code is amended to  
2 read:  
3 945. The provisions, standards, rights, and obligations set  
4 forth in this title are binding upon all original purchasers and  
5 their successors-in-interest. For purposes of this title, associations  
6 and others having the rights set forth in Sections 1368.3 and  
7 1368.4 shall be considered to be original purchasers and shall  
8 have standing to enforce the provisions, standards, rights, and  
9 obligations set forth in this title.  
10 SEC. 2. Section 1363 of the Civil Code is amended to read:  
11 1363. (a) A common interest development shall be managed  
12 by an association that may be incorporated or unincorporated.  
13 The association may be referred to as a community association.  
14 (b) An association, whether incorporated or unincorporated,  
15 shall prepare a budget pursuant to Section 1365 and disclose  
16 information, if requested, in accordance with Section 1368.  
17 (c) Unless the governing documents provide otherwise, and  
18 regardless of whether the association is incorporated or  
19 unincorporated, the association may exercise the powers granted  
20 to a nonprofit mutual benefit corporation, as enumerated in  
21 Section 7140 of the Corporations Code, except that an  
22 unincorporated association may not adopt or use a corporate seal  
23 or issue membership certificates in accordance with Section 7313  
24 of the Corporations Code.  
25 The association, whether incorporated or unincorporated, may  
26 exercise the powers granted to an association in this title.  
27 (d) Meetings of the membership of the association shall be  
28 conducted in accordance with a recognized system of  
29 parliamentary procedure or any parliamentary procedures the  
30 association may adopt.  
31 (e) Notwithstanding any other provision of law, notice of  
32 meetings of the members shall specify those matters the board  
33 intends to present for action by the members, but, except as  
34 otherwise provided by law, any proper matter may be presented  
35 at the meeting for action.

1 (f) Members of the association shall have access to association  
2 records, including accounting books and records and membership  
3 lists, in accordance with Article 3 (commencing with Section  
4 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the  
5 Corporations Code. The members of the association shall have  
6 the same access to the operating rules of the association as they  
7 have to the accounting books and records of the association.

8 (g) If an association adopts or has adopted a policy imposing  
9 any monetary penalty, including any fee, on any association  
10 member for a violation of the governing documents or rules of  
11 the association, including any monetary penalty relating to the  
12 activities of a guest or invitee of a member, the board of directors  
13 shall adopt and distribute to each member, by personal delivery  
14 or first-class mail, a schedule of the monetary penalties that may  
15 be assessed for those violations, which shall be in accordance  
16 with authorization for member discipline contained in the  
17 governing documents. The board of directors shall not be  
18 required to distribute any additional schedules of monetary  
19 penalties unless there are changes from the schedule that was  
20 adopted and distributed to the members pursuant to this  
21 subdivision.

22 (h) When the board of directors is to meet to consider or  
23 impose discipline upon a member, the board shall notify the  
24 member in writing, by either personal delivery or first-class mail,  
25 at least 10 days prior to the meeting. The notification shall  
26 contain, at a minimum, the date, time, and place of the meeting,  
27 the nature of the alleged violation for which a member may be  
28 disciplined, and a statement that the member has a right to attend  
29 and may address the board at the meeting. The board of directors  
30 of the association shall meet in executive session if requested by  
31 the member being disciplined.

32 If the board imposes discipline on a member, the board shall  
33 provide the member a written notification of the disciplinary  
34 action, by either personal delivery or first-class mail, within 15  
35 days following the action. A disciplinary action shall not be  
36 effective against a member unless the board fulfills the  
37 requirements of this subdivision.

38 (i) Whenever two or more associations have consolidated any  
39 of their functions under a joint neighborhood association or  
40 similar organization, members of each participating association

1 shall be (1) entitled to attend all meetings of the joint association  
2 other than executive sessions, (2) given reasonable opportunity  
3 for participation in those meetings, and (3) entitled to the same  
4 access to the joint association's records as they are to the  
5 participating association's records.

6 (j) Nothing in this section shall be construed to create, expand,  
7 or reduce the authority of the board of directors of an association  
8 to impose monetary penalties on an association member for a  
9 violation of the governing documents or rules of the association.

10 SEC. 3. Section 1374 of the Civil Code is amended to read:

11 1374. Nothing in this title may be construed to apply to a  
12 development wherein there does not exist a common area as  
13 defined in subdivision (b) of Section 1351.

14 This section is declaratory of existing law.

15 SEC. 4. Section 1378 of the Civil Code is amended to read:

16 1378. (a) This section applies if an association's governing  
17 documents require association approval before an owner of a  
18 separate interest may make a physical change to the owner's  
19 separate interest or to the common area. In reviewing and  
20 approving or disapproving a proposed change, the association  
21 shall satisfy the following requirements:

22 (1) The association shall provide a fair, reasonable, and  
23 expeditious procedure for making its decision. The procedure  
24 shall be included in the association's governing documents. The  
25 procedure shall provide for prompt deadlines. The procedure  
26 shall state the maximum time for response to an application or a  
27 request for reconsideration by the board of directors.

28 (2) A decision on a proposed change shall be made in good  
29 faith and may not be unreasonable, arbitrary, or capricious.

30 (3) Notwithstanding a contrary provision of the governing  
31 documents, a decision on a proposed change shall be consistent  
32 with any governing provision of law, including, but not limited  
33 to, the Fair Employment and Housing Act (Part 2.8 (commencing  
34 with Section 12900) of Division 3 of Title 2 of the Government  
35 Code), or a building code or other applicable law governing land  
36 use or public safety.

37 (4) A decision on a proposed change shall be in writing. If a  
38 proposed change is disapproved, the written decision shall  
39 include both an explanation of why the proposed change is

1 disapproved and a description of the procedure for  
2 reconsideration of the decision by the board of directors.

3 (5) If a proposed change is disapproved, the applicant is  
4 entitled to reconsideration by the board of directors of the  
5 association that made the decision, at an open meeting of the  
6 board. This paragraph does not require reconsideration of a  
7 decision that is made by the board of directors or a body that has  
8 the same membership as the board of directors, at a meeting that  
9 satisfies the requirements of Section 1363.05. Reconsideration by  
10 the board does not constitute dispute resolution within the  
11 meaning of Section 1363.820.

12 (b) Nothing in this section authorizes a physical change to the  
13 common area in a manner that is inconsistent with an  
14 association's governing documents—~~or governing~~, *unless the*  
15 *change is required by law.*

16 (c) An association shall annually provide its members with  
17 notice of any requirements for association approval of physical  
18 changes to property. The notice shall describe the types of  
19 changes that require association approval and shall include a  
20 copy of the procedure used to review and approve or disapprove  
21 a proposed change.

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24 **CORRECTIONS:** \_\_\_\_\_

25 **Correction Line - Page 1.**  
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